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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 380

RONALD L. TODD, ET AL.,

Petitioners,

vs.

JOINT APPRENTICESHIP COMMITTEE, ETC., AND BETHLEHEM STEEL COMPANY, AND LOCAL UNION NO. 1, ETC., ET AL.,

Respondents.

BRIEF FOR RESPONDENTS, JOINT APPRENTICESHIP COMMITTEE OF THE STEEL WORKERS OF CHICAGO AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION NO. 1, AND ITS NAMED OFFICERS AND OFFICIALS, IN RESPONSE TO MEMORANDUM FOR THE UNITED STATES.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Memorandum filed on behalf of the United States construes the Complaint as an attack on the alleged exclusion of Negroes from the craft of structural ironwork. It views plaintiffs' attempt to obtain work on the United States Courthouse and Federal Office Building in Chicago, Illinois, as only the particular focus of the Complaint. This construction is erroneous. The first paragraph of the Complaint is the predicate upon which the cause of action is based. This paragraph alleges the various provisions included in Contract No. GS-5PC-1178 to eliminate bias and discrimination.

The recommendation, contained in the Memorandum, that certiorari should be granted is apparently founded pri-

marily on the conclusion that the Complaint was broad enough to sustain the relief granted by the District Court in its preliminary injunction. The Complaint must be read as a whole. This shows the action to be nothing more than an attempt to secure the benefits plaintiffs claim were theirs under Contract No. GS-5PC-1178. Plaintiffs' Counsel summed up the case in just these terms. (Respondent Joint Apprenticeship Committee's Brief in Opposition, at page 13 and Transcript page 10.)

If the Memorandum's interpretation of the Complaint is incorrect, then the recommendation that certiorari should be granted is not well-founded. In addition, however, it goes beyond the record and apparently suggests that the Petition be granted because of events subsequent to the hearing and issuance of the temporary injunction.

Exception is taken to the conclusion that racial discrimination appears to be a continuing practice because no Negroes have yet been employed as journeymen or apprentice ironworkers. This conclusion is not based on any evidence contained in the record. On page 6 the Memorandum suggests that the efforts of GSA officials to obtain certification of Negro ironworker apprentices was met with an arbitrary and discriminatory attitude on the part of the Joint Apprenticeship Committee. The statement is made that there was a "flat rejection" of the attempts by the GSA officials. To the contrary, it should be noted (see page 661 of Transcript) that the basis of the Joint Apprenticeship Committee's refusal to accede to the demands of the GSA officials was based on its position that no preference should be shown to the plaintiffs, simply because they were Negroes. It was further based on the fact that there were many other young men waiting at that time to be indentured, and that the plaintiffs had been recruited to apply for apprenticeship training only as a result of the effort which was being made to pacify Negro groups bringing

pressure to bear on the Federal authorities. And finally, it was based on the fact that there were unemployed indentured apprentices available for work. Further, on page 6, the Memorandum notes that the Joint Apprenticeship Committee had never indentured a Negro as an apprentice ironworker since its formation in 1952. In making this observation, it fails to also note the very important testimony given by Mr. Flood, the Co-Ordinator of the Joint Apprenticeship Committee, at page 649 of the Transcript. He testified that during the period the Joint Apprenticeship Committee had been in existence, *no Negroes had ever applied for admission to the program* prior to the time plaintiffs Todd, Hill and Cochran applied. At this same point the Memorandum cites a letter contained in Appendix B to the Union's Brief in Opposition, which asserted that the Union and Committee were going to switch to a merit system of selection, thereby implying that prior to that time the system had been discriminatory. This implication is misleading because a reading of the letter cited shows that the Committee had always selected its trainees on the basis of the individual applicant's qualifications, and the chronology of his application.

In considering matters subsequent to the hearing, and outside the record, the Memorandum takes note of the fact that the Committee has revised its apprenticeship selection standards at the request of the Department of Labor. It then states that despite this, no Negro applicant has been admitted to the program. Here again, the implication is that a discriminatory selection policy existed and is still being followed. The Joint Apprenticeship Committee suggests that such a conclusion is completely unwarranted, and that it would be improper for this Court to give consideration to any of these matters subsequent to the hearing without having before it a full record of the circumstances and events which have transpired since that time. The

fact is, that three other Negroes took the first test under the new selection system put into effect in January, 1964, and are currently on the list awaiting indenturing. Plaintiffs in this action refused to take it. At the insistence of the Department of Labor and the Human Relations Commission of the City of Chicago, the results of the test given again in June of 1964 were "slotted" in among the results of the January, 1964 test. This caused the three Negroes to be dropped lower than they were before because other non-Negro boys in the June group attained higher scores. One Negro applicant is among the group who took the test in January, 1965.

There is a further implication that the Civil Rights Act of 1964 should have some bearing on this case. It is submitted that the resolution of the issues here must be had without reference to the legislation which was passed subsequent to the hearing and issuance of the temporary injunction. If, however, this Court decides that the Civil Rights Act of 1964 is relevant to the disposition of these issues, then it must also give consideration to the provisions of 42 U. S. C. A. § 2000e-2(j), which provides as follows:

> "Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex,

> or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area. Pub. L. 88-352, Title VII, § 703, July 2, 1964, 78 Stat. 255."

All of the evidence in this record covering the efforts made by the General Service Administration, the President's Committee on Equal Employment Opportunity, and the Department of Labor, clearly shows a design to obtain preferential treatment for Todd, Hill and Cochran. Congress apparently recognized that in the Government's efforts to afford Negroes their rights, these kind of abuses had developed. It sought to remedy them by including the above quoted provision in the Civil Rights Act of 1964.

The Memorandum states that because the Federal Courthouse project has been completed there is no extra-judicial remedy which the Government can give Petitioners. The implication here is that some effort must be made to fashion a judicial remedy regardless of the law. This argument seems to presuppose that judicial relief should be given even in the face of the clear law to the contrary. The Court should give no consideration to this argument.

In deciding the question of mootness presented by the Petition herein, the Court should be aware of the jurisdictional question which remains unresolved. It becomes important in analyzing the reason why no amendment to the Complaint was ever filed. All of the briefs have discussed the scope of the Complaint as it touches on the question of mootness. Why was no amendment filed changing this from ". . . a simple case in which the plaintiffs seek to enforce the contract as to which though they are not parties they are beneficiaries, and being beneficiaries, we assert their right to enforce that contract to secure the benefits intended for them." (Statement of plaintiff's Counsel, Transcript p. 10), to general attack on the allegedly discriminatory system? None was filed, because

in the absence of a connection with the Federal Office Building in Chicago there was clearly no jurisdiction in this case. This is why the entire cause of action was structured around the alleged rights which the Plaintiffs had pursuant to the contract for the construction of the Federal Office Building. It was only by filling this kind of suit that Plaintiffs had any hope of invoking the Court's jurisdiction. Plaintiffs recognized that the only cause of action they could possibly have was to obtain employment on the Federal Office Building, and it had to be predicated on their alleged rights under the non-bias provisions of Contract No. GS-5PC-1178.

This is why the Complaint has never been amended to fit the new controversy theory conceived by Plaintiffs to escape their mootness dilemma.

If any cause of action ever existed, it was in connection with the Federal Office Building. Its completion, *by others over whom the Joint Apprenticeship Committee had no control,* mooted the case insofar as the Respondent Joint Apprenticeship Committee is concerned.

Respondent Joint Apprenticeship Committee and its named officers and officials respectfully urge that the Petition for Writ of Certiorori be denied.

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JOINT APPRENTICESHIP COMMITTEE OF THE STEEL WORKERS OF CHICAGO AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION NO. 1, Sidney I. Cole, Chairman, Frank D. Reiland, Treasurer, A. Walter Becker, Thomas Cannon, James Eads, Joseph Frankovic, Stanford Jacobs, and Edmund D. Flood, Apprentice Co-Ordinator; IRON WORKERS BRIDGE AND STRUCTURAL UNION, LOCAL NO. 1, Steve Zakula, President, Frank Pauley, Secretary-Treasurer, Joseph Frankovic, Job Representative, and Edmund D. Flood, Apprentice Co-Ordinator; BETHLEHEM STEEL COMPANY, a Delaware corporation,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENT IRON WORKERS LOCAL UNION NO. 1 REPLY BRIEF TO SOLICITOR GENERAL'S MEMORANDUM

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CHAMPLIN-SHEALY COMPANY, CHICAGO 368

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RESPONDENT IRON WORKERS LOCAL UNION NO. 1 REPLY BRIEF TO SOLICITOR GENERAL'S MEMORANDUM

LOCAL UNION NO. 1, IRON WORKERS (Union) has heretofore submitted its brief in opposition to the Peti-

tioner's request for a writ of certiorari. On November 9, 1964, the Court invited the Solicitor General to express his views concerning the instant matter and this Brief is in reply to the Solicitor General's Memorandum.

We submit that the Solicitor General has missed the thrust of the Court of Appeals' decision and the question presented for possible certiorari. All of the parties and the Court of Appeals have utilized the word "mootness" in discussing the present status of the case. While it is true that the case is "moot", from the standpoint of this Respondent the issue far exceeds any concept of ordinary mootness. Defendants in the trial of a cause have a basic right to rely upon the issues generated by a plaintiff's pleading or raised during the course of a trial. It is the plaintiff who initiates the lawsuit. It is the plaintiff who alleges the facts upon which he intends to rely and it is the plaintiff who sets forth the nature of his grievance and the relief he seeks. On the other hand, a defendant is not required to defend all lawsuits which might arise but only the particular lawsuit brought by the plaintiff. And, this underlies the Court of Appeals' decision and this is what the Solicitor General has overlooked. The Union submitted no evidence in this case because *this case* warranted no submission. During the course of the oral argument before the Court of Appeals the judges specifically inquired of counsel representing the various respondents whether or not in a lawsuit which raised the question of general and continued illegal discrimination, the Respondents would have evidence to introduce. This Respondent answered in the affirmative. The Court of Appeals specifically noted in its decision that "Some of the defendants introduced no evidence" (Pet. App. 34 a). And, the Court of Appeals concluded that "No relief within the scope of the complaint could now be granted." (Pet. App. 36 a). The issue then is not limited to mootness in its strictest sense but is more closely aligned to the question of

due process for to permit a lawsuit to be reframed, thus denying defendants their day in court, would be to deprive them of due process. As the Court of Appeals demonstrated in its decision—and as we point out in our original brief—from the outset, Petitioners confined their action to one involving employment at specific work by a specific contractor on a specific job at a specific location under a specific General Services Administration contract. Nothing else was litigated and Petitioners sought only to stop the project from proceeding or to have the General Services Administration withhold payments to the Bethlehem Steel Company (Bethlehem). The entire case revolved around Bethlehem and the Union in this case was only a derivative defendant because it had representatives on a Joint Apprenticeship Committee. Now, the Solicitor General suggests that the case as regards Bethlehem has been "mooted" (Brief, pg. 7) but has not been mooted as regards the derivative defendants against whom no relief was sought and, as regards this Respondent, against whom no specific allegation was made in the Complaint.

An examination of the Solicitor General's Memorandum reflects that the basis for his opinion is his apparent belief that there is a continuing controversy between Petitioners and the Union. This so-called "continuing controversy" has neither legal nor factual support. As pointed out in our original brief (pgs. 11 and 12, including fns. 11 and 12), if Petitioners feel they have a cause of action against the Union, nothing prohibits them from bringing it and, certainly, with the protections afforded under the new Civil Rights Act and through the Department of Labor, Petitioners' remedies are available and more than adequate. More important, the Joint Apprenticeship Committee and the instant Union have taken major steps not to correct nonexistent discrimination, but to offer equal opportunity. The

Solicitor General's facts, in this respect, are erroneous. His recital that the Union and the Joint Apprenticeship Committee "are ready to switch to a merit system" (Brief, pg. 6) has been phrased in the wrong tense. The certificate of registration of the Apprenticeship Program as issued by the Department of Labor was reissued on January 16, 1964, and the Apprenticeship Program met all of the requirements of the Department of Labor's equal opportunity standards which became effective January 17, 1964. On November 10, 1964, the Administrator of the Bureau of Apprenticeship and Training of the Department of Labor wrote the Joint Apprenticeship Committee expressing recognition of full conformance with the regulations of the Department and stating, that following a "field review", the Committee "is to be congratulated for affording equality of opportunity for apprenticeship regardless of race, color, creed, religion or national origin." (A copy of said letter is attached hereto as Appendix A). Information concerning apprenticeship has been and is being disseminated through an Apprenticeship Information Center maintained in Chicago under the auspices of the Illinois State Employment Service. Even though other applicants had been waiting their turn for indenture into the Apprenticeship Program, the Program was started anew with all applicants being placed on an equal footing in an order based upon pre-determined objective standards approved by the Department of Labor. Not only are there negroes who have taken the examinations, met the qualifications and been placed on the list, but additionally, the Joint Apprenticeship Committee has actively and overtly attempted to disseminate information concerning the Apprenticeship Program to all who might be interested. The Joint Apprenticeship Committee and the Union have, in fact, taken affirmative steps to hope to insure equal opportunity. If equal

opportunity did not exist prior to the taking of these steps, it was not due to the Respondents' failure to fulfill a duty imposed upon them, for there was no legal duty to search for applicants and if there were a moral duty it was never communicated to them or, in fact, to the bulk of the country.

In actuality, Petitioners here have no real interest to participate in the Apprenticeship Program as it is being administered under the auspices of the Department of Labor. They seek only to derive a benefit from a lawsuit in which the issues now claimed to exist were never presented or litigated (See our original brief, fns. 9 and 10, pgs. 9 and 10). The adoption and implementation of the new standards for admission into the Apprenticeship Program were done voluntarily and in an effort to cooperate with the national policy. At no point in the past had negroes been refused admission into the Union. To accuse a union of discrimination because no negroes sought admission would be to attribute guilt because the Union did not assume an affirmative burden to recruit negroes, as negroes, when no such burden was imposed upon the Union and when its mental processes had not even been exposed to the considerations of active cooperation as distinguished from the absence of discrimination. The efforts of the Union today far exceed its legal obligations and these efforts represent a genuine move toward participation in establishing equality of opportunity. As a national policy, preference in these situations has not as yet been adopted. Yet, this case represents nothing more than an effort to judicially impose preference disregarding the fact that the judicial imposition of preference in this case can come about only by ignoring the due process guarantee of having a day in court. And this is what the Court of Appeals was talking about when it examined the Complaint and the Record—when it found that certain defendants had not introduced evi-